

JAN 29 2004



New York State  
Office of  
Children & Family  
Services

George E. Pataki  
Governor

John A. Johnson  
Commissioner

December 24, 2003

U.S. Department of State  
CA/OCS/PRI  
Adoption Regulations Docket Room  
SA-29  
2201 C Street, N.W.  
Washington, DC 20520

RE: Proposed Regulations (State/AR-01/96)  
Convention on Intercountry Adoption; Intercountry Adoption Act of 2000

Dear Sir/Madam:

The purpose of this letter is to provide comments on the proposed regulations to implement the 1993 Hague Convention on Protection of Children and Cooperation in Respect to Intercountry Adoption and the federal Intercountry Adoption Act of 2000. The proposed regulations were published in the September 15, 2003 Federal Register.

*Capital View Office Park*

52 Washington Street  
Rensselaer, NY 12144-2796

The New York State Office of Children and Family Services (OCFS) is the State agency responsible for the approval, regulation and supervision of adoption programs in New York, including but not limited to, adoption programs that place out foreign-born children. OCFS also administers the New York State Adoption Service that administers the State's photo listing service and adoption subsidy program. Also, OCFS administers the Interstate Compact on the Placement of Children in New York.

1. Coordination Between Accrediting Entities and State Approval/Licensing Agencies.

The proposed regulations recognize that State agencies will continue to have the authority to approve/license adoption programs in their particular State. Section 96.27(g) clarifies that the federal standards do not eliminate the need for an agency or a person to fully comply with the laws of the jurisdiction in which they operate. Compliance with State licensing and approval standards is also required in section 96.30. OCFS supports such requirements.

OCFS has several recommendations for regulatory modifications that would enhance a close working relationship and coordination between the accrediting entity and State approval/licensing agencies.

A. Section 96.24 Procedures for Evaluating Applicants for Accreditation Approval

OCFS recommends that the coordination of efforts between the accrediting entity and the State approval/licensing agency could be enhanced by requiring the accrediting entity to consult with the State approval/licensing



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agency to discuss the legal and compliance status of the applicant in the respective State. OCFS recommends an amendment to Section 96.24 to require such consultation as part of the accreditation process.

**B. Section 96.26 Protection of Information and Documents by the Accrediting Agency.**

Section 96.26 addresses the issue of protection of information and documents by the accrediting entity. The proposed regulation does provide for the sharing of information with an appropriate State agency. Given the clear benefit of the exchange of information between the accrediting entity and the State approval/licensing agency, OCFS recommends that the section be revised to clarify that a State agency includes the State approval/licensing agency.

**C. Section 96.55 Performance of Hague Convention Communication and Coordination Functions in Outgoing Cases**

Section 96.55 addresses disclosure of information by the accredited entity or person with the Central Authority of the other Convention Country, the Secretary of State and the State court. OCFS recommends that the regulation be amended to clarify that nothing in this regulation is intended to preclude access to such information by a State approval/licensing agency, to the extent otherwise authorized by State law. Our concern is that section 96.55 may otherwise be misinterpreted as being an all-inclusive list.

**D. Section 96.63 Renewal of Accreditation or Approval**

Section 96.63 addresses the process and procedure for the renewal of accreditation or approval by the accrediting entity. OCFS recommends that this section be amended to require the accrediting entity to consent with the applicable State approval/licensing agency regarding the State legal and compliance status of the accredited agency or approved person. As in the case of the original decision whether to accredit or approve, the State may possess information relevant to the decision to renew accreditation or approval.

**E. Section 96.70 Review of Complaints About Accredited Agencies and Approved Persons by the Complaint Registry.**

Section 96.70 provides for the creation of a Complaint Registry and for the referral of complaints to the "appropriate accrediting entity, the Secretary, or a law enforcement or other agency". OCFS requests clarification that, for the purpose of sharing complaints involving agencies and persons who are also subject to State monitoring, referrals must be made to the applicable State approval/licensing agency.

**F. Sections 96.75-79 Adverse Action Against Accredited Agencies or Approved Person**

Sections 96.75-79 set forth the requirement that an accrediting entity must take adverse action against an accredited entity or approved person for non-compliance with federal standards. The proposed regulations set forth procedures that must be carried out in such situations. OCFS recommends that the proposed regulations be amended to provide that if the accrediting agency takes enforcement action against an accredited agency or an approved person that the accredited entity must inform the applicable state approval/licensing agency of such action.

## 2. Disclosure of Medical History Information to Prospective Adoptive Parents.

Section 96.49 requires the accredited agency or approved person to provide medical history information to prospective adoptive parent(s), the earlier of the least 2 weeks before either the adoption or placement for adoption, or the date on which the prospective adoptive parent(s) travel to the other Convention country to complete all procedures in such country relating to the adoption or placement for adoption, whichever is earlier. Prospective adoptive parent(s) would have at least one week to review the medical information and to consult with a medical professional.

Over the past several years, OCFS has received a number of complaints regarding the adequacy and timing of the receipt of medical history information in regard to international adoptions. New York requires that an agency provide medical history information to a prospective adoptive parent who is defined as an individual who has been approved as an adoptive parent by the agency, has indicated an interest in adopting a particular child and for whom the agency has commenced the placement process. Under State standards, medical history information must be provided to the extent available.

OCFS is concerned that, under the federal standard, medical history information will not be made available until much later in the adoption process and that adoptive parents will not be able to make an informed decision. As you are aware, the adoption process involves a great deal of emotional commitment on the part of adoptive parent(s). It also involves a great deal of financial and time commitment by adoptive parent(s). Given the pressures facing adoptive parent(s), it is imperative that they receive available medical history information as early in the placement process as possible.

OCFS recommends that the proposed regulation be amended to require that adoption entity or approved person provide the medical history of a child and his/her birth parent, to the extent available, to a person at the point where such has been approved as an adoptive parent, has expressed an interest in adopting a particular child and the agency has commenced the placement process. Also, when a complete medical history is not available, the accredited entity or approved person is to continue reasonable efforts to secure otherwise available medical information for disclosure to the prospective adoptive parent(s).

OCFS also requests clarification that if State standards require a more timely and/or comprehensive disclosure of medical history information that such

State standards would continue to apply to agencies and/or persons approved or licensed by the State.

### 3. Standards for Continued Accreditation and Approval

#### A. Section 96.35 Suitability of Agencies and Persons to Provide Adoption Services Consistent With the Convention

Section 96.35 requires a criminal background and child abuse clearance for any individual in a senior management position or who works directly with parents and/or children.

OCFS has a question whether it is the position of the federal government that in light of this federal requirement, State implementing statutory changes will not be required. That is, the federal regulatory standard implementing federal statute will serve as sufficient authority for States to implement such reviews.

#### B. Section 96.46 Using Supervised Providers in Other Convention Countries.

Section 96.46 sets forth rigorous requirements on primary providers outside of the United States. The primary provider must assume contract and other civil liability in regard to prospective adoptive parent(s) for the supervised provider's contracted services and compliance with the proposed regulations. However, the proposed regulation permits the supervised provider to bill the prospective adoptive parents directly.

OCFS has had a number of complaints over the years from prospective adoptive parents who, while working with a New York adoption agency, also had financial arrangements with entities or persons in the foreign country. The complaints involved situations where the entity or person in the foreign country required additional fees for services. The concerns raised by the prospective adoptive parents were that they were being taken advantage of as fees reflected activities for which they had not been previously advised or exceeded previous statements regarding the amount of such fees.

OCFS procedure and policy has been to request the New York agency to have primary responsibility for fees paid to entities and persons in the foreign country. If a dispute or issues arise, it is the New York agency that must deal directly with the parties in the foreign country and not the prospective adoptive parent(s). OCFS recommends that the primary provider should function as the direct agent of the prospective adoptive parent(s) in regard to all fee issues.

#### C. Section 96.47 Preparation of Home Studies in Incoming Cases

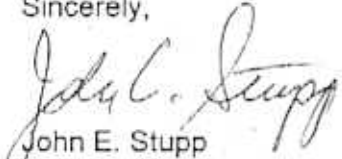
Section 96.47 provides that a home study is to include the results of a criminal background check. The home study may be performed by an individual who is an employee of an exempted provider.

In New York, criminal history background reviews of prospective adoptive parents through OCFS may only be completed where a person is applying to become an approved adoptive parent through an approved authorized agency.

OCFS is concerned whether the proposed regulation may be interpreted as authorizing disclosure of criminal history information to persons not currently authorized to do so under State law. OCFS requests clarification of this issue.

OCFS appreciates the opportunity to comment on the proposed regulations. Please contact Assistant Deputy Counsel John Stupp (518) 474-8490 if you have any questions or these comments.

Sincerely,

  
John E. Stupp  
Assistant Deputy Counsel

cc: Larry Brown  
Nancy Martinez  
Susan Costello  
Lee Prochera, Esq.